

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

PRINCEWILL EZEBUIHE,

Plaintiff,

v.

**Civil Action No. 5:07cv75
(Judge Stamp)**

**UNITED STATES DEPARTMENT OF JUSTICE/
FEDERAL BUREAU OF PRISONS;
CHRISTI CUTRIGHT, UNICOR Factory Manager;
ANTHONY CONRAD, Assistant Factory Manager;
P. FAZENBACKER; Production Supervisor,**

Defendants.

**REPORT AND RECOMMENDATION THAT MOTION TO PROCEED
IN FORMA PAUPERIS BE DENIED**

On June 7, 2007, the *pro se* plaintiff, a federal inmate, initiated this case by filing a Bivens Action and Federal Tort Claims Act against the above-named defendants. As well, the plaintiff filed a Motion for Leave to Proceed in forma pauperis and an Affidavit of Poverty. On June 7, 2007, the plaintiff was sent a Notice of Deficient pleading advising him that he must submit a Consent to Collection of Fees from Trust Account and a Prisoner Trust Account Report. Instead of completing those forms, the plaintiff paid the \$350.00 filing fee on July 9, 2007. Because in forma pauperis status involves more than the right to proceed without prepayment of fees, the undersigned issued an Order on July 19, 2007, permitting the plaintiff twenty days to submit the necessary documents for a proper review of his request to proceed in forma pauperis.

On August 6, 2006, the plaintiff filed his Prisoner Trust Account Report. The plaintiff's account balance on July 27, 2007 was \$1,134.13. In addition, the report reflects that the plaintiff's average monthly deposits during the six months prior to his filing this civil action were \$400.19, while his average monthly balance for those six months was \$1171.41.

In light of the information disclosed on the Prisoner Trust Account Report, it is the undersigned's recommendation that the plaintiff's Motion to proceed in forma pauperis (Dckt. 2) should be DENIED.

The plaintiff may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985) United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as shown on his docket sheet.

DATED: August 13, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE